Save San Francisco Bay Association
Natural Resources Defense Council
Environmental Defense Fund
The Bay Institute
Pacific Coast Federation of Fishermen's Associations

October 30, 1997

Hon. Bruce Babbitt
Secretary of the Interior
U.S. Dept. of the Interior
1849 C Street, N.W.
Washington, D.C.

Hon. John Garamendi
Deputy Secretary of the Interior
U.S. Dept. of the Interior
1849 C Street, N.W.
Washington D.C. 20240

Hon. John Leshy
Solicitor
U.S. Dept. of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Hon. Donald Berry
Acting Assistant Secretary for Fish and Wildlife
U.S. Dept. of the Interior
1849 C Street, N.W.
Washington D.C. 20240

RE: Concerns over Proposed CALFED HCP and Incidental Take Statement;
       Concerns over Proposed Legislation to Extend No Surprises to Section 7

Gentlemen:

       We write to express our strong concerns over two recent proposals that could significantly
affect protection of the Bay-Delta estuary. We have enclosed the comments of members of the
Environmental Water Caucus (EWC) on the proposed incidental take permit for the CALFED
Bay-Delta Program.

       First, we are strongly opposed to the issuance of an incidental take permit, and "no
surprises" assurances, at this time in the CALFED process. The CALFED staff is preparing a
programmatic EIS/EIR that will outline a proposed long-term solution, but will only begin to
discuss the potential impacts of the numerous program elements. There is no way this general
level of analysis, particularly in terms of determining potential impacts to the vast range and
number of depleted species at issue, can justify formal "assurances" that would limit the resources
available to protect such species in the future. We appreciate that the Department of Interior's
statements that it intends to provide such assurances "commensurate with" the level of
information available. However well intentioned, this pledge is not persuasive. The simple fact is
that far too little is known about how to restore the myriad of depleted species, and particularly
California's critical salmon stocks, to sustainable levels to hold out the prospect of any concrete
"no surprises" guarantee. No useful purpose is served by raising expectations to the contrary.

       Second, these concerns are heightened by a current proposal to amend the federal
Endangered Species Act (ESA) to extend "no surprises" assurances to the federal government

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and its contractors, specifically with regard to the proposed CALFED HCP. This proposal is unacceptable and would surely make a successful CALFED process virtually impossible. The entire premise of the no surprises policy (and one that is extremely controversial within the conservation community) is that where habitat conservation plans fail to achieve their goals, the federal government will step in and serve, in effect, as the species' guarantor. The proposed amendment would place all of the risk regarding the effectiveness of any CALFED HCP on the very species that are already on the brink of extinction. While we have high hopes for CALFED, we are not confident that the Ecosystem Restoration Program Plan (ERPP), or a related habitat conservation plan, will provide guarantees of ecosystem recovery sufficient to jettison the safety net provided by the ESA. (We have prepared separate comments detailing the very substantial limitations of the draft ERPP.)
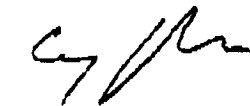
Please do not hesitate to call Cynthia Koehler (415/626-6847), Terry Young (510/658-8008) or Hal Candee (415/777-0220) if you have any questions or if we can be of any further assistance in this regard.
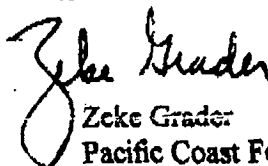
Sincerely,

Cynthia Koehler
Save the Bay

Hamilton Candee
Natural Resources Defense Council

Terry F. Young
Environmental Defense Fund

Gary Bobker
The Bay Institute

Zeke Grader
Pacific Coast Federation of Fishermen's Associations

cc: Vice President Al Gore
        Senator Dianne Feinstein
        Senator Barbara Boxer
        Representative George Miller
        Representative Nancy Pelosi
        CEQ Chair Katherine McGinty
        EPA Administrator Carol Browner
        Assistant Administrator Bob Perciasepe
        Regional Administrator Felicia Marcus
        David Cottingham

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